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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/708,113	02/10/2004	Jay Koester	5188-1	2112

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EXAMINER

KRAMER, DEAN J

ART UNIT PAPER NUMBER

3652

DATE MAILED: 03/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/708,113

Applicant(s)

KOESTER ET AL.

Examiner

Dean J. Kramer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 10-12 and 14 is/are rejected.
- 7) ☒ Claim(s) 8, 9 and 13 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 5/4/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There is no clear antecedent basis for "the upper carriage bar" or "the carriage" as recited in lines 5 and 7, respectively, of claim 5.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 3, and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Lynch (U.S. Pat. No. 4,674,786).

Lynch ('786) shows a hay bale spike assembly comprising an upper horizontal beam (24), a lower horizontal beam (22), connecting members (25,27,29), an upper spike (40), and two lower spikes (46).

4. Claims 1, 3, 4, and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Lynch et al. (U.S. Pat. No. 5,240,365).

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The patent to Lynch et al. ('365) shows three sockets (28,34,36) for *removably* attaching one upper spike and two lower spikes.

5. Claims 1, 3, 4, 7, 11, and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Jones et al. (U.S. Pat. No. 4,120,405).

The Jones et al. patent ('405) shows a spike support assembly for use with a lift truck comprising an upper horizontal beam (24), a lower horizontal beam (22), connecting members (20,32), an upper spike (14), and two lower spikes (16). Jones et al. also shows adjustable fastening means (34,35) that are deemed capable or *adapted* to "combine" with the upper and lower carriage bars of a standard lift truck vehicle.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

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consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 2, 10, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones et al. (4,120,405) in view of Lynch et al. (5,240,365).

The Lynch et al. patent ('365), as presented above in section 4, shows it old and well known to removably fasten an upper spike and two lower spikes to a frame assembly.

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to *removably* attach the Jones et al. upper spike (14) to the frame assembly as taught by Lynch et al. so that it could be more easily repaired or replaced. Regarding claims 2 and 10, it would have been obvious to a person having ordinary skill in the art to make the resulting frame and spike assembly as light as possible (e.g. 60 to 70 pounds) while still being of durable construction to handle relatively heavy bales of hay. By forming the assembly between 60 and 70 pounds would allow a user to manually lift and install the assembly on a truck.

Allowable Subject Matter

9. Claims 8, 9, and 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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10. Claim 5 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Specification

11. The disclosure is objected to because of the following informalities: It appears that in paragraph [0017], line 1, the phrase "Fig. 3 is a perspective view" should be changed to –Figs. 3A and 3B are perspective views—in order to more accurately describe those figures.

Appropriate correction is required.

Conclusion


12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Violette and Frison both show assemblies attachable to the carriage bar of a standard lift truck.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dean J. Kramer whose telephone number is (703) 308-2181. The examiner can normally be reached on Mon., Tues., Thurs., Fri. (7:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen Lillis can be reached on (703) 308-1113. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

 3/15/05
Dean J. Kramer
Primary Examiner
Art Unit 3652

djk
3/15/05